

## The Highland Licensing Board

Meeting – 14 May 2013

Agenda Item	10.2
Report No	HLB/062/13

### Premises Licence Review Application

Ossians Hotel, High Street, Fort William, PH33 6DH

### Report by the Clerk to the Licensing Board

#### Summary

A premises licence review application in terms of section 36 of the Licensing (Scotland) Act 2005 has been received from the Chief Constable, Police Scotland and the Board must hold a Hearing to determine the application.

#### 1.0 Background

1.1 The premises to which the review application relates is known as Ossians Hotel which is a four storey building, located in the centre of Fort William's High Street. On Friday and Saturday evenings a discotheque takes place within the function room of the premises until 0200 hours the following day.

#### 2.0 Legislation

2.1 In terms of section 36(1) of the Licensing (Scotland) Act 2005 any person may apply to the Board in respect of any licensed premises in relation to which a premises licence has effect, for a review on any of the following grounds:-

- (a) That one or more of the conditions to which the premises licence is subject has been breached, or
- (b) Any other ground relevant to one or more of the licensing objectives.

#### 3.0 Premises Licence Review Application

3.1 A premises licence review application dated 9 April 2013 has been submitted to the Board on behalf of the Chief Constable and is attached to this Report as Appendix 1.

The application alleges that there has been a breach of the following local condition which forms part of the premises licence conditions:

1. After 9.00pm alcoholic and non alcoholic drinks shall be sold or served in plastic or polycarbonate glasses (*this will only apply to premises opening after 1.00am in accordance with the Licensing Board's Policy Statement*).

## **4.0 Review Hearing**

**4.1** Section 38 (1) of the Act provides that where the Board receives a premises licence review application it must hold a Hearing for the purposes of considering and determining the application.

**4.2** Section 38 (4) of the Act provides that the Licensing Standards Officer must, before the review hearing, prepare a Report on the application which the Board must take into account. This Report dated 30 April 2013 is attached as Appendix 2.

**4.3** A copy of this Report and the premises licence review application have been sent to the Premises Licence Holder, Derek and Janice Wallace, who have been invited to attend the Hearing.

**4.4** A representative of the Chief Constable has also been invited to attend the Hearing.

## **5.0 Board's powers on review**

In terms of section 39 of the Act the Board may, if satisfied that a ground for review is established (whether or not on the basis of any circumstances alleged in the premises licence review application considered at the Hearing) take the following steps:

- (a) issue a written warning to the Licence Holder,
- (b) make a variation of the licence,
- (c) suspend the licence for such period as the Board may determine,
- (d) revoke the licence.

In terms of section 84 of the Act where, in the course of a review hearing in respect of a premises licence, the Board makes a finding in relation to a personal licence holder who was working in the licensed premises that the licence holder concerned acted in a manner which was inconsistent with any of the licensing objectives then the Board must hold a further Hearing.

## **6.0 Recommendation**

The Board is invited to determine the premises licence review application by the Chief Constable by way of a review hearing.

Designation: Clerk of the Licensing Board

Date: 30 April 2013

Ref: HC/RSL/1167:AHM/JT

Background Papers:Licensing (Scotland) Act 2005.

Appendix 1: Letter from Area Commander Derek Paterson on behalf of the Chief Constable, Police Scotland dated 9 April 2013

Appendix 2: Report from Elizabeth Treasurer, Licensing Standards Officer dated 30 April 2013

Appendix A : Conditions attached to Premises Licence

9<sup>th</sup> April 2013

Our Ref: DP/MF

The Depute Clerk to the Licensing Board  
The Highland Licensing Board  
Lochaber House  
High Street  
Fort William  
PH33 6EL

Highlands and Islands Division  
Lochaber, Skye & Lochalsh Area  
Command HQ  
Police Station  
High Street  
FORT WILLIAM  
PH33 6EE

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16 APR 2013

Tel: 101  
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CHIEF EXECUTIVE'S SERVICE  
LOCHABER

Dear Sirs

**POLICE REPRESENTATION – REQUEST FOR THE REVIEW OF LICENCE, OSSIAN'S HOTEL AND NIGHTCLUB, HIGH STREET, FORT WILLIAM.**

As agent for the Chief Constable, I am moved to request a review of the aforesaid premises licence which is held by Derek Wallace and Janice Wallace, Ossian's Hotel, High Street, Fort William, PH33 6DH.

Derek Wallace and Janice Wallace own and operate the said premises. The designated premises manager is Mrs Janice Wallace, born [REDACTED] at Broxburn, Manager, Ossian's Hotel, High Street, Fort William.

About 0130 hours on the 24<sup>th</sup> March 2013, officers from Fort William were called to Ossian's Hotel in relation to a male person having been struck over the head with a glass bottle whilst he was within the premises. Enquiry was carried out and subsequently a male person was reported to the Procurator Fiscal in Fort William for this offence.

Under the terms of the Premises Licence for these premises, the operating hours are from 1100 to 0100 hours Monday to Thursday, 1100 hours to 0200 hours Friday and Saturday and 1200 hours to 0100 hours Sunday.

As such they are subject to late opening conditions along with a number of local conditions one of which stipulates: (1) after 9.00 pm alcoholic and non alcoholic drinks shall be sold or served in plastic or polycarbonate glasses. (This will only apply to premises opening after 1.00 am in accordance with the Licensing Board's Policy Statement).

As a result this would appear to be a direct breach of one of the premises licence conditions, local condition (1) as detailed above. In terms of the Licensing (Scotland) Act 2005 Section 36 (1) & (3)(a), I respectfully request a review of the premises licence in relation to (premises).

Yours faithfully

**Derek Paterson**  
**Area Commander**

**Highland Licensing Board Meeting – Tuesday, 14 May, 2013**

**Review Hearing in terms of the Licensing (Scotland) Act, 2005 Section 38 (1)**

**Premises: Ossians Hotel, High Street, Fort William PH33 6DH**

**Report by Licensing Standards Officer**

**1.0 Summary:**

1.1 This Report has been prepared in response to notification from the Clerk to the Highland Licensing Board in terms of Section 38(3)(b)(ii) of the Licensing (Scotland) Act, 2005 that a review hearing is to be held in respect of the Premises Licence for the Ossians Hotel, High Street, Fort William held by Derek and Janice Wallace (HC/RSL/1167).

**2.0 Licensing History:**

2.1 A Premises Licence for Ossians Hotel was granted by the Highland Licensing Board, under transitional arrangements, on 1<sup>st</sup> September 2009 to Derek and Janice Wallace.

2.2 A variation in terms of Section 29 of the Licensing (Scotland) Act, 2005 in respect of an increase to the operating hours for the premises was approved by the Highland Licensing Board on 20<sup>th</sup> October 2009.

Janice Wallace has been the premises manager since 1<sup>st</sup> September 2009.

**3.0 Legislation:**

3.1 The premises licence is subject to:-

- Mandatory Conditions in accordance with Schedule 3 of the Licensing (Scotland) Act, 2005;
- Late Opening Conditions in accordance with Section 27(3) &(4) of the Licensing (Scotland) Act 2005;
- Licensing Conditions (Late Opening Premises)(Scotland) Regulations 2007;
- Local Conditions attached by the Highland Licensing Board (Ross, Skye & Lochaber Division) in accordance with Section 27(6) of the Licensing (Scotland) Act, 2005.

#### **4.0 Description of premises:**

- 4.1 The premises are situated in a central location on High Street, Fort William. They comprise of a four storey building with a coffee shop on the ground floor; lounge bar, restaurant/function room, kitchen and toilets on the first floor and bedrooms on the second and third floors.
- 4.2 A discotheque takes place within the restaurant/function room of the premises on Friday and Saturday evenings from 2200 to 0200 hours.

#### **5.0 Synopsis:**

5.1 On 17<sup>th</sup> April, 2013 I received notification from A H Mackenzie, Clerk to the Highland Licensing Board, that an application for a review of the premises licence had been received from the Chief Constable, Police Scotland in respect of the above premises. The circumstances of the review being that a male person had allegedly been assaulted within the premises on 24<sup>th</sup> March, 2013, having been struck with a glass bottle. The circumstances of the allegation involve a breach of a local condition attached to the premises licence by the Highland Licensing Board. The Conditions which apply to the premises licence are attached as Appendix A to this report.

5.2 I carried out an un-announced compliance visit at 2200 hours on Saturday 24<sup>th</sup>, April, 2013 when I met with the Premises Licence Holder and Premises Manager, Janice Wallace, who confirmed that she was aware of the application for review and that bottled beer had been served in breach of the local condition :

- 1. After 9.00pm alcoholic and non alcoholic drinks shall be sold or served in plastic or polycarbonate glasses. (this will only apply to premises opening after 1.00am in accordance with the Licensing Board's Policy Statement).*

5.3 She confirmed that on the evening concerned, bottled beer, which formed a minimal part of sales during the discotheque, had not been de-canted into plastic by her staff. By way of an explanation, she informed me that this was an oversight on her part, having misinterpreted the condition in relation to drinks being served in plastic. She stated that she had understood the condition related only to drinks normally dispensed in glassware ie. spirits, draught beers etc.

#### **6.0 Measures taken by Licence-holder**

6.1 Janice Wallace appeared to be genuinely concerned and apologetic regarding this incident and had taken steps to prevent any re-occurrence.

- 6.2 I can confirm that the Licence-holder has addressed this issue by re-training her staff accordingly. A number of staff working within the premises at the time of my visit were spoken to and confirmed their understanding of the condition. In future, this issue will be included within the staff training package for any new staff members.
- 6.3 The Licence-holder informed me that she was in the process of identifying a supplier who could provide bottled types of alcohol in plastic vessels.
- 6.4 All other aspects of compliance were being observed in relation to the mandatory, late night and local conditions.

## **7.0 Supplementary information:**

- 7.1 Since transition, there have been no incidents involving glass within these premises.
- 7.2 The premises operate an incident recording diary and at the end of each shift, a de-briefing session takes place with duty staff.
- 7.3 Prior to this incident, Janice Wallace has been pro- active in seeking advice and guidance from the Licensing Standards Officer in relation to other proposed activities.
- 7.4 The premises are members of Lochaber Pubwatch with Janice Wallace attending on a regular basis.
- 7.5 There is ongoing liaison with Police Scotland at Fort William who have visited the premises on a regular basis and have had no adverse issues.

## **8.0 CONCLUSION:**

- Following discussion with the Licence-holder, I am satisfied that the breach of this condition has been due to a genuine misinterpretation, albeit a very naïve one, with no deliberate intention to contravene a condition imposed by the Highland Licensing Board.
- I would consider the premises to be well managed by a responsible and co-operative licensee, with no previous issues or concerns having been identified.
- Now that the matter has been highlighted and addressed with the appropriate measures having been put in place, I believe that the premises licence holder has reasonably exercised all due diligence to prevent a re-occurrence.

Elizabeth Treasurer

Licensing Standards Officer

30 April, 2013

**CONDITIONS ATTACHED TO PREMISES LICENCE IN RESPECT OF**

**OSSIANS HOTEL, HIGH STREET, FORT WILLIAM**

- (1) Mandatory Conditions in accordance with Schedule 3 of the Licensing (Scotland) Act 2005.**
- (2) Late Opening Licence Conditions as follows:**
  1. A person trained to the satisfaction of the Licensing Board in administering first aid must be present on the premises from 1:00am (on any day when the premises are open at that time) until whichever is the earlier of-
    - (a) the time at which the premises next close; and
    - (b) 5:00am.
  2. A designated person who is the holder of a personal licence must be present on the premises from 1:00am (on any day when the premises are open at that time) until whichever is the earlier of –
    - (a) the time at which the premises next close; and
    - (b) 5:00am or such other time as the Licensing Board may specify.
  3. There must be written policies in existence concerning-
    - (a) the evacuation of the premises; and
    - (b) the prevention of the misuse of drugs on the premises.
  4. A CCTV system must be installed on the premises to the satisfaction of the appropriate chief constable and must be kept in good working order.
  5. There must be persons responsible for checking on the safety and wellbeing of persons using any toilet facilities on the premises.
  6. A person who holds a licence granted under section 8 of the Private Security Industry Act 2001 (a) must be positioned at every entrance to the premises from 1:00am (on any day when the premises are open at that time) until whichever is the earlier of-
    - (a) the time at which the premises next close; and
    - (b) 5:00am or such other time as the Licensing Board may specify.

**(3) Local Conditions** (these conditions were granted by the Ross, Skye & Lochaber Division of the Highland Licensing Board):

1.	After 9.00pm alcoholic and non alcoholic drinks shall be sold or served in plastic or polycarbonate glasses. ( <i>this will only apply to premises opening after 1.00am in accordance with the Licensing Board's' Policy Statement</i> ).
2.	Any music or live performances will cease at 2.45am.
3.	No person will be permitted into the premises after 12.00midnight. For avoidance of doubt outdoor drinking areas are not part of the premises for the purpose of this condition. ( <i>This will only apply to premises licensed until 3.00am</i> )
4.	The premises licence holder will maintain and make use of membership of the local radio link or pub watch scheme if there is such a scheme set up for the locality within which the premises are situated and the premises are applicable to that scheme.
5.	The premises licence holder shall take all practical steps to ensure that no fly-posting is undertaken in respect of any performance or event taking place in the premises.
6.	Premises opening for the sale of alcohol prior to 11.00am shall make available the customary breakfast meal.
7.	The premises licence holder after 1.00am shall make available a plentiful supply for sale prepared hot and cold food such as sandwiches, pies, filled rolls, burgers, pizzas and the like.
8.	Any open fire or heating appliance in the premises or part thereof, shall be fitted with a guard sufficient to prevent injury to any one who might come into contact with it.
9.	All electrical sockets in public areas shall be adequately protected.
10.	A minimum of two high chairs must be provided for young children.
11.	Plastic or paper containers shall be available for children if requested.
12.	Dartboards will be located in areas separate from any children's area and any pool table will be situated in a location to be approved by the Licensing Standards Officer.
13.	Children under the age of 16 are excluded from any room where there is a bar counter after 10.00 pm except during private functions or for the purpose of viewing live entertainment or where the child is in the room for the purpose of taking a meal. This condition does not apply to any child who is in the bar solely for the purpose of passing to or from some other part of the premises being a part to or from which there is no other convenient means of access or egress.
14.	While on these premises all children must be in the company of an appropriate, responsible adult. This condition does not apply to children of the licence holder or children who are resident on the premises when not in the bar areas.
15.	Any alcohol for consumption in the outdoor drinking area will be sold only in the licensed premises.